

MOTION FILED
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. 75-1468

M. MORRIN & SON COMPANY, INC.,
v. *Petitioner,*
BURGESS CONSTRUCTION COMPANY, ET AL.,
Respondents.

MOTION BY THE
ASSOCIATED GENERAL CONTRACTORS OF AMERICA
FOR LEAVE TO FILE BRIEF AMICUS CURIAE

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Comes now the Associated General Contractors of America (hereinafter AGC) and moves for permission to file a brief amicus curiae in this case pursuant to Rule 42(1) and (3). Petitioner has advised AGC that it has no objection to the filing of the brief, but respondent has not given its consent.

The AGC is a national organization of general contractors who perform all types of construction work throughout the world. It was founded in 1918 by ninety-seven of this country's then-leading general contractors. Its membership now includes approxi-

mately 8,200 general contracting firms who perform approximately \$60 billion in construction work a year. The AGC is a recognized spokesman in and for the construction industry.

AGC requests leave to file a brief amicus curiae because this case centers upon the interpretation of a contract clause involving construction site availability. Availability of the construction work site is of utmost importance to any construction contractor, and clauses of the type involved in this case are often found in construction contracts.

The AGC believes that the Circuit Court of Appeals for the Tenth Circuit erred as a matter of law in concluding in this case (526 F.2d 108) that the prime construction contractor did not breach its contract with its subcontractor when it failed to turn over portions of the construction site at the times contemplated in the contract by the parties. Moreover, AGC believes that the Circuit Court's decision in this regard is in conflict with judicial precedent established by the United States Court of Claims.

The issue in this case is of broad significance transcending the bounds of the individual parties' grievances. It can be better addressed by segments of the industry rather than by the individual parties.

It has come to the AGC's attention that a number of its chapters have already filed amicus motions in this case with the Court. The Utah Chapter has filed a motion for leave to file a brief amicus curiae, along with its brief amicus curiae, and the Colorado and Wyoming chapters have separately filed motions for leave to file briefs amici curiae. In addition, AGC is aware that the Idaho, Montana, New Mexico and Inland Empire

(Washington) chapters have voted to submit their views to the Court. In addition, other chapters are considering similar action in this case. AGC therefore proposes to act hereinafter in this case as representative and spokesman for all of its chapters.

With regard to the issues in this case, AGC of course is in full accord with the views expressed to the Court by the Utah Chapter in its motion and brief amicus curiae. Moreover, AGC believes that the brief of the Utah Chapter adequately addresses the legal and practical considerations involved in the case.

WHEREFORE, AGC would prompt the Court to grant certiorari in this case and requests that leave be granted for AGC to file a brief amicus curiae.

Respectfully submitted,

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